

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

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COMPLAINT OF THE CITY AND  
COUNTY OF SAN FRANCISCO

Docket No. C2011-2

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**ANSWER OF THE UNITED STATES POSTAL SERVICE**  
(August 8, 2011)

Pursuant to 39 C.F.R. § 3030.12, the United States Postal Service submits its Answer to the enumerated paragraphs of the Complaint of the City and County of San Francisco, filed in the above-captioned docket on May 18, 2011.

1. This paragraph of the Complaint is not an assertion of fact, but asserts a legal conclusion that the Complaint filed in this docket falls within the jurisdiction of the Postal Regulatory Commission to review complaints under 39 U.S.C. § 3662. Accordingly, no answer is necessary. But insofar as an answer may be required, the Postal Service denies that all of the Complaint falls within the jurisdiction of the Commission established by section 3662.

Overview

2. The Postal Service denies the characterization of the Complaint reflected in this paragraph's first sentence. The Postal Service denies that the Complainant has alleged any "deficiencies" in mail delivery service. The Postal Service denies that its delivery to addresses identified as hotels that Complainant refers to as "Single Room Occupancy hotels" or "SRO hotels" violates Postal Service regulations. (Hereafter, Complainant's list of 502 addresses furnished in the related federal district court case may also be referred to as "Complainant's

SRO hotels.”) The Postal Service denies the allegations in this paragraph’s second sentence. The Postal Service lacks sufficient knowledge, information or documentation that would permit it to form a belief as to the allegations regarding the harms and risks to SRO hotel residents in this paragraph’s second sentence; accordingly to the extent a response may be warranted, they are denied. The Postal Service denies liability for “[a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.” 28 U.S.C. § 2680(b); the Postal Service further denies that any harm or risks associated with lost or stolen mail arise from action taken by the Postal Service.

3. The Postal Service lacks sufficient knowledge, information or documentation that would permit it to form a belief as to the allegations in this paragraph’s first, second and third sentences; accordingly to the extent a response is warranted, they are denied. The Postal Service denies this paragraph’s fourth and fifth sentences. The Postal Service denies that the absence of a private bathroom and kitchen constitute the only significant similarities or differences among SRO hotels, other hotels, SRO hotel rooms, other hotel rooms, other spaces occupied by humans, and other buildings occupied by humans. The Postal Service further denies that the socioeconomic circumstances of delivery customers matter when making decisions about the appropriate mode of delivery.

4. The Postal Service lacks sufficient knowledge, information or documentation that would permit it to form a belief as to the allegations in this paragraph; accordingly to the extent a response is warranted, they are denied.

5. To the extent this paragraph asserts conclusions of law, no response is required. The Postal Service lacks sufficient knowledge, information or documentation that would permit it to form a belief as to the allegations in this paragraph; accordingly to the extent a response may be warranted, they are denied.

6. The Postal Service denies that it has refused to deliver the mail. The Postal Service admits that single-point delivery was and is the proper mode of delivery for Complainant's SRO hotels. The Postal Service also would not object to delivering mail at those locations by placing it into a locked receptacle, but under applicable regulations the Postal Service is not obligated to provide centralized delivery to individual, locked receptacles at those locations. The Postal Service denies that Complainant has demonstrated, for those San Francisco SROs in which Complainant seeks a changed mode of delivery, that conversion to another mode of delivery would be more cost effective for the Postal Service, as required by Postal Operations Manual (POM) section 631.6., The Postal Service affirmatively observes that it is aware of no factual or legal barrier that precludes management of Complainant's respective SRO hotels from using any "locked mailboxes" to effectuate their legal obligation to provide secure delivery to respective SRO occupants subsequent to receipt of all mail for a given SRO hotel via single point drop from a letter carrier.

7. The Postal Service admits that the "Luna Letter" accurately applies Postal Service policy to the facts embodied by Complainant's SRO hotels and conforms to applicable regulations. The Postal Service admits that the quotation

is an accurate excerpt of the “Luna Letter.” Moreover, delivery to a particular location or receptacle at each SRO hotel was agreed upon by its management, so while management interest in undertaking its responsibilities regarding the mail has apparently waned, the Postal Service itself has just continued delivery as was previously agreed between management and the Postal Service. .

8. This paragraph of the Complaint is not a statement of fact, but consists of an asserted legal conclusion that the Postal Service’s mode of mail delivery to San Francisco’s SRO hotels violates Postal Service policies and regulations, and the law. Accordingly, no answer is required. But insofar as an answer may be required, the Postal Service denies the applicability of POM 631.45 since the controlling regulation is POM 615, *Deliver to Persons at Hotels, Institutions, and Schools*, or more specifically POM 615.2 (*Mail Addressed to Persons at Hotels, Schools, and Similar Places*). Since POM 615 defines the appropriate mode of delivery for Complainant’s SRO hotels, POM 63 (*Modes of Delivery, Mail Receptacles, and Keys* (which corresponds to the first two digits in 631.45)) –in which POM 631.45 can be found—is wholly inapplicable to determining the appropriate delivery mode to hotels, including Complainant’s SRO hotels. That is made clear by POM 631.31, which points out the primacy of POM 615 for locations falling within the latter’s ambit. Finally, nor has Complainant made any showing, as required under POM 631.6 (*Conversion of Mode of Delivery*), that conversion to another more efficient mode of delivery is warranted. .

9. The Postal Service admits that this paragraph accurately reproduces the text of POM 631.451, except that it omits a Note at the end of that section, which states:

*Note:* The tenant's correct mailing address is the address of the entrance at which the mail receptacles are located, and should include the apartment number or designated mailbox number.

10. The Postal Service admits that Complainant accurately reproduces the content of 39 U.S.C. § 403(c).

11. This paragraph of the Complaint does not make factual assertions; it consists of conclusions of law. Accordingly, no answer is required. But insofar as an answer may be required, the Postal Service denies that the Luna Letter is a regulation, denies that a letter to customers explaining the application of regulations and policy to facts must be a regulation, and denies that the mode of mail delivery to San Francisco's SRO hotels exceeds the Postal Service's regulatory authority.

12. The Postal Service admits that this paragraph accurately reproduces the content of 39 U.S.C. § 401(2), with an ellipsis denoting the omission of section 401(1).

13. The Postal Service admits that this paragraph accurately reproduces the content of 39 C.F.R. § 211.2(a), but denies that the formatting—including italicization—is accurately reproduced.

14. This paragraph of the Complaint constitutes a prayer for specific relief. No response is deemed necessary. To the extent that a response may be required, the Postal Service denies that Complainant is entitled to the requested

relief, or to any relief whatsoever. The Postal Service further denies that POM 631.45 applies to Complainant's SRO hotels since their delivery mode is established by POM 615, and no demonstration that a conversion would be more cost effective for the Postal Service, as required by POM 631.6, has been shown.

15. This paragraph of the Complaint is not an assertion of fact, but asserts a legal conclusion that the Complaint filed in this docket falls within the jurisdiction of the Postal Regulatory Commission to review complaints under 39 U.S.C. § 3662 and 39 C.F.R. §§ 3030 and 3031. Accordingly, no answer is necessary. But insofar as an answer may be required, the Postal Service denies that all of the Complaint falls within the jurisdiction of the Commission established by 39 U.S.C. § 3662 and 39 C.F.R. §§ 3030 and 3031.

16. This paragraph of the Complaint consists of the names and addresses of counsel for Complainant to whom communications are to be directed and, as such, requires no answer.

#### Factual Allegations

17. The Postal Service lacks sufficient knowledge, information or documentation to form a belief as to the allegation in this paragraph; to the extent a response may be required, it is therefore denied.

18. The Postal Service lacks sufficient knowledge, information or documentation that would permit it to form a belief as to the allegations in this paragraph; to the extent a response may be required, it is therefore denied.

19. The Postal Service lacks sufficient knowledge, information or documentation that would permit it to form a belief as to the allegations in this

paragraph's first sentence; to the extent a response may be required, it is therefore denied. The Postal Service denies that the absence of a private bathrooms and kitchens are the only characteristics pertinent to the appropriate mode of delivery at Complainant's SRO hotels. The Postal Service lacks sufficient knowledge, information or documentation that would permit it to form a belief as to the allegations in this paragraph's third and fourth sentences; to the extent a response may be required, these allegation are therefore denied. The Postal Service denies the allegations in this paragraph's fifth sentence.

20. The Postal Service lacks sufficient knowledge, information or documentation that would permit it to form a belief as to the allegations in this paragraph; to the extent a response may be required, these allegation are therefore denied.

21. The Postal Service lacks sufficient knowledge, information or documentation that would permit it to form a belief as to the allegations in this paragraph; to the extent a response may be required, these allegation are therefore denied.

22. The Postal Service lacks sufficient knowledge, information or documentation that would permit it to form a belief as to the allegations in this paragraph; to the extent a response may be required, these allegation are therefore denied.

23. The Postal Service lacks sufficient knowledge, information or documentation that would permit it to form a belief as to the allegations in this paragraph; accordingly to the extent a response is warranted, they are denied.

The Postal Service denies that any agreement binding upon the Postal Service, or any employee empowered to bind the Postal Service, committed it to deliver mail to individual, locked mailboxes at SRO hotels. The Postal Service admits that some postal employees working in the vicinity of San Francisco did, as late as 2008, may have misapprehended local law as binding upon the Postal Service.

24. The Postal Service lacks sufficient knowledge, information or documentation that would permit it to form a belief as to the allegations in this paragraph; to the extent a response may be required, these allegation are therefore denied. However, the Postal Service admits that at least some of Complainant's SRO hotels did install some locked receptacles..

25. The Postal Service admits that some local postal officials did assist in converting the mode of delivery at a few of Complainant's SRO hotels during 2006-2008. The Postal Service denies that any such conversions were in accordance with the mode of carrier delivery prescribed in postal regulations.

26. The Postal Service denies that POM 631.45 has ever had any bearing upon the proper mode of delivery to Complainant's SRO hotels, as explained in POM 631.31. As that section notes, POM 631 is inapplicable to locations where POM 615 controls the mode of delivery. POM 615 indicates that single point drop is the appropriate mode of delivery to hotels. The Postal Service lacks sufficient knowledge, information or documentation that would permit it to form a belief concerning the accuracy of the final sentence in this paragraph; to the extent a response may be required, it is therefore denied.

27. The Postal Service lacks sufficient knowledge, information or documentation that would permit it to form a belief as to what information Complainant has received, or what Complainant believes; accordingly to the extent a response is warranted, they are denied. The Postal Service admits that Postal Operations Manual § 631.45 is a valid regulation, albeit unrelated to Complainant's claim that its SRO hotels are entitled to centralized delivery.

28. The Postal Service lacks sufficient knowledge, information or documentation that would permit it to form a belief as to the allegations in this paragraph; accordingly to the extent a response may be warranted, they are denied. The Postal Service denies that mail delivery to individual, locked mailboxes is more secure than single-point mail delivery. Further, the Postal Service asserts that complaints about theft from delivery points are substantially higher for locked, individual receptacles than for single point drop locations, presumably since at the latter building management customarily takes appropriate and required control over mail and secures its delivery to respective addressees.

29. The Postal Service denies the accuracy of Complainant's characterization of the "Luna Letter", which speaks for itself. The "Luna Letter" accurately states the Postal Service's delivery policy applicable to hotels including Complainant's SRO hotels, as specified by POM 615.

30. The Postal Service denies the accuracy of Complainant's characterization of the "Luna Letter", which letter speaks for itself. To the extent necessary, the Postal Service denies the allegations of this paragraph.

31. The Postal Service denies the allegations in this paragraph.

32. The Postal Service admits the first sentence of this paragraph. The Postal Service generally denies that it delivers to buildings Complainant's characterize as SROs in other cities via individual, locked mailboxes, but admits that as in San Francisco, some such examples do exist. The Postal Service denies that the proper mode of delivery to hotels, including Complainant's SRO hotels, as defined by postal regulations, is anything other than single point drop. POM 615. The Postal Service otherwise denies the characterizations and allegations contained in paragraph 32.

33. The Postal Service denies the characterizations of the "Luna Letter" in this paragraph since the letter speaks for itself. The Postal Service further denies that, were delivery to Complainant's SROs now being established, the mode would be anything other than single point drop. The Postal Service also denies that a conversion of delivery mode at Complainant's SRO hotels from single point drop to delivery via individual, locked receptacles would be consistent with postal regulations regarding mode of delivery. Finally, the Postal Service also denies that a conversion of delivery mode at those of Complainant's SRO hotels where delivery has been via individual, locked receptacles back to single point drop would be consistent with postal regulations, since POM 631.7 "grandfathers" improper mode of delivery unless it is "detected within 90 days" of its commencement, thereby reflecting the value to the Postal Service of a stable delivery network. The Postal Service admits that these regulatory requirements are summarized in the Luna Letter where it states, "Postal regulations contained

in both the Domestic Mail Manual (DMM) and Postal Operations Manual (POM) provide that single point service is the appropriate mode of delivery for mail addressed to persons in 'hotels, schools, and similar places.' DMM 508.1.7.2; POM 615.2" [footnote referring to the grandfathering effectuated by POM 631.7 omitted].

34. Admitted that the Luna Letter is not a postal regulation..

35. Admitted that the Luna Letter has not been printed in the Federal Register..

36. The Postal Service denies the allegations in this paragraph.

37. This paragraph appears to consist of legal argument about the meaning of postal regulations, to which no response is required; to the extent necessary, allegations in this paragraph are denied.

38. This paragraph appears to consist of legal argument about the meaning of postal regulations, to which no response is required; to the extent necessary, allegations in this paragraph are denied. The Postal Service specifically denies that the installation of individual, unit-specific locked mailboxes compels the Postal Service to deliver the mail to such receptacles; building management can and does use such receptacles for its own delivery of mail to respective addressee at hundreds of thousands or millions of locations throughout the domestic service area. .

39. The Postal Service denies the allegations in this paragraph.

40. The Postal Service does not have a definition for what Complainant has identified to the Postal Service as approximately 502 "SRO hotels" located

in San Francisco. However, the Postal Service does understand that within the list of 502 locations Complainant identifies in connection with the federal district court litigation now pending on this matter where Complainant is a plaintiff, the Postal Service does provide some form of single point delivery to at least a some group of addressees at each of the over 300 locations listed in the interrogatory response. The Postal Service otherwise denies all allegations in this paragraph .

41. This paragraph of the Complaint consists of legal argument that does not warrant a response; to the extent necessary, the Postal Service denies allegations in this paragraph. The Postal Service denies that the “Luna Letter” contains “misguided, inaccurate, or discriminatory” statements. However, the relief sought by Complainant, if granted, would itself constitute undue discrimination in Complainant’s apparent favor.

42. This paragraph of the Complaint consists of legal argument to which no response is required. But insofar as an answer is required, the Postal Service denies that Complainant’s SRO hotels qualify for centralized delivery under Postal Operations Manual § 631.451 or otherwise.

43. This paragraph of the Complaint is not an assertion of fact, but asserts a legal conclusion that the Postal Service has an inaccurate understanding of Postal Operations Manual § 631.45. Accordingly, no answer is necessary. But insofar as an answer is required, the Postal Service denies all allegations in this paragraph.

44. This paragraph of the Complaint is not an assertion of fact, but asserts a legal conclusion that the income level of addressees informs decisions

regarding the mode of mail delivery. Accordingly, no answer is necessary. But insofar as an answer may be required, the Postal Service denies that the income has any bearing on mode of mail delivery. The Postal Service provides SRO hotels with the mode of mail delivery established by applicable Postal Service regulations and policies and on the same terms as mode decisions are made for other locations. Complainant's position also assumes that the Postal Service monitors delivery points and changes the mode of delivery as conditions at respective locations change, an assumption that is also denied.

45. This paragraph of the Complaint is not an assertion of fact, but embodies legal argument, to which no response is warranted. But insofar as an answer may be required, the Postal Service denies that any mode of delivery is inherently more or less safe than another. Safe and secure delivery to single point drops takes place daily to many millions of locations. After mail is delivered via single point drop to the location agreed upon by management for a particular location and the Postal Service, responsibility for taking custody of the mail and delivering it safely to respective addressees rests with that location's management.

46. This paragraph of the Complaint is not an assertion of fact, but consists of argument, legal conclusions, and unattributed opinions to which no response is required. But insofar as an answer may be required, the Postal Service denies all allegations in the paragraph.

47. The Postal Service denies the allegations in this paragraph's first sentence. The Postal Service lacks sufficient knowledge, information or

documentation that would permit it to form a belief as to the allegations in this paragraph's second, third, fourth, fifth and sixth sentences; accordingly to the extent a response is warranted, they are denied. The Postal Service denies that its delivery policy, or acts of delivery, caused any of the harms described in this paragraph.

48. The Postal Service denies the allegations in this paragraph.

#### Nature of the Evidence

49. This paragraph consists of Complainant's declaration of intent to support its allegations with documentary evidence and testimony. While no answer should be required, if one may be required the Postal Service denies allegations in paragraph 49.

50. This paragraph consists of Complainant's declaration of its expectation to rely upon discovery obtained from the Postal Service in related litigation. While no answer should be required, should one be necessary the Postal Service agrees that the federal court case will soon complete discovery and become ripe for cross motions for summary judgment. The Postal Service denies that any documents exist regarding any "decision to ignore POM § 631.45" since that section has never played any role in decisions affecting Complainant's SRO hotels (as explained in POM 631.31), and delivery to those hotels was and is controlled by POM 615; moreover, decisions regarding delivery mode (except more recent, improvidently granted conversions) were largely

made many, many decades ago and in the absence of a basis for converting to another more cost efficient mode those original decisions continue to apply.

51. The Postal Service lacks sufficient knowledge, information or documentation that would permit it to form a belief as to the allegations in this paragraph; accordingly to the extent a response is warranted, all allegations in this paragraph are denied.

52. This paragraph consists of Complainant's declaration of its intent to reserve its alleged rights to seek additional discovery. While no answer should be required, if one should be the Postal Service denies paragraph 52.

#### Related Proceedings

53. The Postal Service admits that the Complaint has not been resolved by an existing Commission proceeding. Notwithstanding, this matter has been pending in the federal court system for well over two years, through a great deal of discovery which should soon be finished and followed by cross-motions for summary judgment. The remaining legal claims in that case are constitutionally based (the court order dismissing other claims was attached to the Postal Service Motion to Dismiss (June 7, 2011). Complainant/Plaintiff attempted to stay that case's progress, without success. See Exhibit 1 (Order Denying Plaintiff's Motion To Stay, Modifying Schedule (June 24, 2011). If only for reasons of judicial economy, the Commission would do well to let that proceeding conclude before continuing with litigation in this docket.

54. The Postal Service admits this paragraph's first sentence. The Postal Service denies that Postal Service conduct has caused any constitutional

violations. The Postal Service admits this paragraph's third sentence. The Postal Service denies this paragraph's fourth sentence. This paragraph's fifth and sixth sentences consist of Complainant's declaration of intent regarding how it will manage the relationship between its litigation in the district court and the present litigation. While no answer should be required, if one should be necessary, the Postal Service lacks sufficient knowledge, information or documentation that would permit it to form a belief as to the allegations in this paragraph's fifth and sixth sentences; accordingly to the extent a response is warranted, they are denied.

#### Settlement

55. The Postal Service admits only that a previous mediation attempt was unsuccessful. Otherwise, allegations in this paragraph are denied.

56. This paragraph of the Complaint is not an assertion of fact, but asserts a legal conclusion that attempts to settle the issues raised in the Complaint would be ineffective. Accordingly, no answer is necessary. But insofar as an answer is required, the Postal Service denies the allegations contained in this paragraph.

#### Count I

57. The Postal Service incorporates its responses to paragraphs 1 through 56 by reference.

58. The allegations set forth in this paragraph of the Complaint argue for, or state, conclusions of law to which no response is deemed necessary. To

the extent that a response may be required, the Postal Service denies the allegations in this paragraph.

59. The allegations set forth in this paragraph of the Complaint argue for, or state, conclusions of law to which no response is deemed necessary. To the extent that a response may be required, the Postal Service admits that applicable Postal Service regulations provide for single-point delivery to SRO hotels. The Postal Service admits that the “Luna Letter” is not a Postal Service regulation. Otherwise, the Postal Service denies allegations and implications in this paragraph.

60. The allegations set forth in this paragraph of the Complaint argue for, or state, conclusions of law to which no response is deemed necessary. To the extent that a response may be required, the Postal Service denies this paragraph and its claim regarding the applicability of POM 631.45. The Postal Service states that regulations in the DMM and POM, and its consistent application of them to delivery locations, provide that single point delivery is appropriate for Complainant’s SRO hotels.

61. The allegations set forth in this paragraph of the Complaint argue for, or state, conclusions of law to which no response is deemed necessary. To the extent that a response may be required, the Postal Service denies this paragraph.

62. The allegations set forth in this paragraph of the Complaint argue for, or state, conclusions of law to which no response is deemed necessary. To

the extent that a response may be required, the Postal Service denies this paragraph.

63. The allegations set forth in this paragraph of the Complaint argue for, or state, conclusions of law to which no response is deemed necessary. To the extent that a response may be required, the Postal Service denies this paragraph.

64. This paragraph was stricken by PRC Order No. 779; accordingly, no response is required.

65. The allegations set forth in this paragraph of the Complaint argue for, or state, conclusions of law to which no response is deemed necessary. To the extent that a response may be required, the Postal Service denies this paragraph.

66. This paragraph of the Complaint constitutes a prayer for specific relief. No response is deemed necessary. To the extent that a response may be required, the Postal Service denies that Complainant is entitled to the requested relief, or to any relief whatsoever.

#### Count II

67. The Postal Service incorporates its responses to paragraphs 1 through 56 by reference.

68. The allegations set forth in this paragraph of the Complaint argue for, or state, conclusions of law to which no response is deemed necessary. To the extent that a response may be required, the Postal Service denies this paragraph.

69. The allegations set forth in this paragraph of the Complaint argue for, or state, conclusions of law to which no response is deemed necessary. To the extent that a response may be required, the Postal Service denies this paragraph.

Demand for Relief

No response is required in response to Complainant's demand for relief. Yet the Postal Service denies that Complainant is entitled to any relief. The relief it requests would amount to undue discrimination in its favor; it would, moreover, empower one party to dictate the mode through the Postal Service is to provide carrier delivery service, when the federal courts have previously denied such power to any litigant.

The Postal Service, having provided an Answer in this matter, urges that the Commission consider whether its consideration of this matter continues to be warranted.

Respectfully submitted,

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August 8, 2011

\*E-Filed 6/24/11\*

United States District Court  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

CITY OF SAN FRANCISCO, et al.,

No. C 09-1964 RS

Plaintiffs,

v.

**ORDER DENYING PLAINTIFF'S  
MOTION TO STAY, MODIFYING  
SCHEDULE**

UNITED STATES POSTAL SERVICE,

Defendant.

The parties have filed competing motions. Plaintiffs request a stay of all litigation (save defendant's deadline to exchange its rebuttal expert reports) pending resolution of a regulatory complaint recently filed before the Postal Regulatory Commission ("PRC"). Defendants oppose a stay, and argue that fairness and efficiency require that the case continue to summary judgment and, if need be, trial. They do, however, request a modification of the dispositive motion hearing date so that the *filing* date will fall after defendants receive certain discovery materials. Although plaintiffs request to stay the entire matter, they nonetheless oppose moving out the dispositive motion deadline.

A court may in its discretion stay proceedings in appropriate circumstances. Generally, a court looks to three factors: (1) whether a stay would unduly prejudice or present a clear tactical disadvantage to the nonmoving party; (2) whether a stay will simplify the issues in question and trial

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of the case; and (3) whether discovery is complete and whether a trial date has been set. *See, e.g., In re Cygnus Telecom. Tech., LLC Patent Litig.*, 385 F. Supp. 2d 1022, 1023 (N.D. Cal. 2005) (citing *Xerox Corp. v. 3Com Corp.*, 69 F. Supp. 2d 404, 406 (W.D. N.Y. 1999); *ASCII Corp. v. STD Entm't USA, Inc.*, 844 F. Supp. 1378, 1380 (N.D. Cal. 1994)).

A stay is not warranted here. The Postal Service argues, as an initial matter, that it will be unduly prejudiced by waiting for a resolution of the PRC complaint. The Postal Service complains that after two years of expensive discovery (and vigorous discovery battles), it is ready to challenge plaintiff's constitutional claims, to test plaintiff's evidentiary presentation, and to resolve the case at either summary judgment or trial. Defendants argue, in other words, that they also have a right to their respective "day in court" to defend against plaintiff's (apparently widely publicized) allegations.

Moreover, even plaintiffs agree that their regulatory claims filed before the PRC are separate and distinct from those constitutional claims that make up this litigation. Indeed, in the summer of 2009, defendants moved to dismiss the instant complaint and argued that, even if plaintiffs had stated viable constitutional claims, it would make sense to defer resolution until plaintiffs first sought relief through the PRC's administrative channels. Plaintiffs successfully defended against that motion by disavowing that theirs were regulatory claims, or claims that depended on resolution of hypothetical regulatory claims. As a matter of fairness, it is difficult to ignore plaintiffs' complete reversal of position. Two years ago, they insisted that deferral or delay of this litigation pending a regulatory proceeding in the PRC would add little but in turn prejudice the individuals plaintiffs represent by delaying relief. They now essentially argue the opposite: that a regulatory proceeding will at least "help" matters in this litigation enough to warrant interruption roughly three months prior to their scheduled trial date. More importantly, the plaintiffs do not actually argue that resolution of the regulatory complaint will "simplify" the substantive issues in question. Plaintiffs contend the matter would be simplified not because the constitutional claims depend or are informed by the regulatory ones, but because plaintiffs promise they will be so "satisfied" with a favorable PRC decision that they will voluntarily drop their constitutional claims. Given the major reversal

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1 behind plaintiffs' stay request, plaintiffs should not be surprised if the Court receives this new  
2 promise with some skepticism.

3 Finally, discovery is nearly complete and a trial date was long ago set. In other words, the  
4 competing considerations with which this Court is tasked do not warrant the stay requested. That  
5 said, a compromise of sorts regarding scheduling is perhaps in order. This Court granted, over  
6 defendants' opposition, plaintiffs a slight extension of discovery deadlines. As the Postal Service  
7 points out, the new deadlines operate such that defendant's deadline to file a motion for summary  
8 judgment falls at a point in time prior to the date on which they will receive certain documents and  
9 discovery. Accordingly, the slight extension of the dispositive motion hearing deadline defendants  
10 request is warranted. As the parties are still in the midst of varied discovery battles, and have filed  
11 myriad discovery motions, it makes sense to push the dispositive motion deadline out slightly  
12 further than requested to allow the referral judge an opportunity to address the parties' numerous  
13 filings. All dispositive motions shall be heard no later than October 13, 2011. The trial date shall  
14 be continued to January 9, 2012. The continuance of the trial date is convenient for the Court's  
15 schedule and the slight delay does indeed allow plaintiffs to pursue their regulatory complaint.  
16 Should plaintiffs prevail there, they of course remain free to voluntarily to dismiss this matter.

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18  
19 IT IS SO ORDERED.

20  
21 Dated: 6/24/11

22   
23 RICHARD SEEBORG  
24 UNITED STATES DISTRICT JUDGE  
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